

John H. Pentecost, Esq., Bar No. 99527  
jpentecost@hartkinglaw.com  
Robert M. Dickson, Esq., Bar No. 135568  
rdickson@hartkinglaw.com  
**HART KIENLE PENTECOST**  
**A PROFESSIONAL CORPORATION**  
4 Hutton Centre Drive, Suite 900  
Santa Ana, California 92707  
Telephone: (714) 432-8700  
Facsimile: (714) 546-7457

Attorneys for Defendant SUN COMMUNITIES,  
INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID ROBINSON

Plaintiff,

V.

## SUN COMMUNITIES, INC.

## Defendants.

CASE NO. 22-cv-05312-TSH

**SUN COMMUNITIES, INC.  
ANSWER TO COMPLAINT**

**Complaint served: September 23, 2022**  
**Current response date: October 14, 2022**  
**New response date: November 14, 2022**

The Hon. Thomas S. Hixson  
Complaint filed: September 19, 2022

1           Defendant SUN COMMUNITIES, INC. (“Defendant”) hereby submits the  
2 following Answer and Affirmative Defenses to the Complaint (“Complaint”) filed  
3 by Plaintiff DAVID ROBINSON (“Plaintiff”). Defendant does not specifically  
4 respond to the headings set forth in the Complaint as they are not averments, except  
5 to say Defendant denies all allegations of unlawful conduct. All allegations not  
6 specifically admitted in this Answer are denied. Defendant responds further as  
7 follows:

8           1.           This answering Defendant denies the allegations of Paragraph 1  
9 of the Complaint that it unlawfully discriminated against Plaintiff. This answering  
10 Defendant lacks sufficient information or belief to ascertain the truth or falsity of the  
11 allegations contained in Paragraph 1 of the Complaint regarding the existence and/or  
12 extent of any disability of Plaintiff or the need for any accommodation, and, on that  
13 basis, denies those allegations contained in Paragraph 1 of the Complaint.

14           2.           This answering Defendant admits the allegations set forth in  
15 Paragraph 2 of the Complaint as to the relief that is being sought but denies any  
16 liability for that relief.

17           3.           This answering Defendant lacks sufficient information or belief  
18 to ascertain the truth or falsity of the allegations contained in Paragraph 3 of the  
19 Complaint regarding the existence and/or extent of any disability of Plaintiff or the  
20 need for any accommodation, and, on that basis, denies those allegations contained  
21 in Paragraph 3 of the Complaint.

22           4.           This answering Defendant admits the allegations set forth in  
23 Paragraph 4 of the Complaint.

24           5.           This answering Defendant lacks sufficient information or belief  
25 to ascertain the truth or falsity of the allegations contained in Paragraph 5 of the  
26 Complaint and, on that basis, denies those allegations contained in Paragraph 5 of  
27 the Complaint.

4 HART, KIENLE PENTECOST  
SANTA ANA, CALIFORNIA 92707

1           6.        This answering Defendant lacks sufficient information or belief  
2 to ascertain the truth or falsity of the allegations contained in Paragraph 6 of the  
3 Complaint and, on that basis, denies those allegations contained in Paragraph 6 of  
4 the Complaint.

5           7.        This answering Defendant lacks sufficient information or belief  
6 to ascertain the truth or falsity of the allegations contained in Paragraph 7 of the  
7 Complaint and, on that basis, denies those allegations contained in Paragraph 7 of  
8 the Complaint.

9           8.        This answering Defendant lacks sufficient information or belief  
10 to ascertain the truth or falsity of the allegations contained in Paragraph 8 of the  
11 Complaint and, on that basis, denies those allegations contained in Paragraph 8 of  
12 the Complaint.

13           9.        This answering Defendant lacks sufficient information or belief  
14 to ascertain the truth or falsity of the allegations contained in Paragraph 9 of the  
15 Complaint and, on that basis, denies those allegations contained in Paragraph 9 of  
16 the Complaint.

17           10.       This answering Defendant lacks sufficient information or belief  
18 to ascertain the truth or falsity of the allegations contained in Paragraph 10 of the  
19 Complaint and, on that basis, denies those allegations contained in Paragraph 10 of  
20 the Complaint.

21           11.       This answering Defendant lacks sufficient information or belief  
22 to ascertain the truth or falsity of the allegations contained in Paragraph 11 of the  
23 Complaint and, on that basis, denies those allegations contained in Paragraph 11 of  
24 the Complaint.

25           12.       This answering Defendant lacks sufficient information or belief  
26 to ascertain the truth or falsity of the allegations contained in Paragraph 12 of the  
27 Complaint and, on that basis, denies those allegations contained in Paragraph 12 of

4 HUTTON CENTRE DRIVE, SUITE 900  
SANTA ANA, CALIFORNIA 92707

1 the Complaint.

2       13.       Defendant admits the website referenced in Paragraph 13 of the  
3 Complaint contained certain language referencing the accessibility of Steele  
4 Canyon. However, this was done by mistake and oversight as Steele Canyon is left  
5 largely in its natural state without construction or modifications that significantly  
6 alter its natural state.

7       14.       This answering Defendant lacks sufficient information or belief  
8 to ascertain the truth or falsity of the allegations contained in Paragraph 14 of the  
9 Complaint and, on that basis, denies those allegations contained in Paragraph 14 of  
10 the Complaint.

11       15.       This answering Defendant admits the allegations set forth in  
12 Paragraph 15 of the Complaint as to the relief that is being sought but denies any  
13 liability for that relief thereof.

14       16.       This answering Defendant admits the allegations set forth in  
15 Paragraph 16 of the Complaint as to the relief that is being sought but denies any  
16 liability for that relief.

17       17.       This answering Defendant does not have information or belief  
18 sufficient to respond to the allegations of Paragraph 17 regarding "...construction  
19 and/or alterations, structural repairs, or additions..." and on that basis denies those  
20 allegations. It is noted that Steele Canyon is left largely in its natural state without  
21 construction or modifications that significantly alter its natural state.

22       18.       This answering Defendant lacks sufficient information or belief  
23 to ascertain the truth or falsity of the allegations contained in Paragraph 18 of the  
24 Complaint and, on that basis, denies those allegations contained in Paragraph 18 of  
25 the Complaint.

26       19.       This answering Defendant does not have information or belief  
27 sufficient to respond to the allegations of Paragraph 19 regarding the allegations

4 HART, KIENLE PENTECOST  
5 HUTTON CENTRE DRIVE, SUITE 900  
6 SANTA ANA, CALIFORNIA 92707

1 contained is subsections i-xiv, and on that basis denies those allegations. It is noted  
2 that Steele Canyon is left largely in its natural state without construction or  
3 modifications that significantly alter its natural state.

4 20. This answering Defendant lacks sufficient information or belief  
5 to ascertain the truth or falsity of the allegations contained in Paragraph 20 of the  
6 Complaint regarding Plaintiff's alleged accessibility issues and, on that basis, denies  
7 those allegations contained in Paragraph 20 of the Complaint.

8 21. This answering Defendant lacks sufficient information or belief  
9 to ascertain the truth or falsity of the allegations contained in Paragraph 21 of the  
10 Complaint and, on that basis, denies those allegations contained in Paragraph 21 of  
11 the Complaint.

12 22. This answering Defendant lacks sufficient information or belief  
13 to ascertain the truth or falsity of the allegations contained in Paragraph 22 of the  
14 Complaint and, on that basis, denies those allegations contained in Paragraph 22 of  
15 the Complaint.

16 23. This answering Defendant incorporates its responses to  
17 Paragraphs 1-22 above herein as its response to the allegations of Paragraph 23.

18 24. This answering Defendant lacks sufficient information or belief  
19 to ascertain the truth or falsity of the allegations contained in Paragraph 24 of the  
20 Complaint and, on that basis, denies those allegations contained in Paragraph 24 of  
21 the Complaint and denies it took any illegal or discriminatory action against  
22 Plaintiff.

23 25. This answering Defendant lacks sufficient information or belief  
24 to ascertain the truth or falsity of the allegations contained in Paragraph 25 of the  
25 Complaint and, on that basis, denies those allegations contained in Paragraph 25 of  
26 the Complaint and denies it took any illegal or discriminatory action against  
27 Plaintiff.

1           26.        This answering Defendant denies the allegations of Paragraph 26  
2 of the Complaint in that the changes Plaintiff is seeking are not “Readily  
3 Achievable”.

4           27.        This answering Defendant denies the allegations of Paragraph 27  
5 of the Complaint in that the changes Plaintiff is seeking are not “Readily  
6 Achievable” inasmuch as Steele Canyon is left largely in its natural state without  
7 construction or modifications that significantly alter its natural state.

8           28.        This answering Defendant denies the allegations of Paragraph 28  
9 of the Complaint.

10          29.        This answering Defendant denies the allegations of Paragraph 29  
11 of the Complaint that nay alterations made triggered the requirements of the ADA.

12          30.        This answering Defendant admits 42 USC § 12183 (a) (2)  
13 referenced in Paragraph 30 exists and states what it states.

14          31.        This answering Defendant denies the allegations of Paragraph 31  
15 of the Complaint in that the changes Plaintiff is seeking are not “Readily  
16 Achievable” inasmuch as Steele Canyon is left largely in its natural state without  
17 construction or modifications that significantly alter its natural state.

18          32.        This answering Defendant denies the allegations of Paragraph 32  
19 of the Complaint in that the changes Plaintiff is seeking are not “Readily  
20 Achievable” inasmuch as Steele Canyon is left largely in its natural state without  
21 construction or modifications that significantly alter its natural state.

22          33.        This answering Defendant denies the allegations of Paragraph 33  
23 of the Complaint in that the changes Plaintiff is seeking are not “Readily  
24 Achievable” inasmuch as Steele Canyon is left largely in its natural state without  
25 construction or modifications that significantly alter its natural state.

26          34.        This answering Defendant denies the allegations of Paragraph 34  
27 of the Complaint in that the changes Plaintiff is seeking are not “Readily

4 HART, KIENLE PENTECOST  
5 HUTTON CENTRE DRIVE, SUITE 900  
6 SANTA ANA, CALIFORNIA 92707

1 Achievable" inasmuch as Steele Canyon is left largely in its natural state without  
2 construction or modifications that significantly alter its natural state.

3 35. This answering Defendant denies the allegations of Paragraph 35  
4 of the Complaint in that the changes Plaintiff is seeking are not "Readily  
5 Achievable" inasmuch as Steele Canyon is left largely in its natural state without  
6 construction or modifications that significantly alter its natural state.

7 36. This answering Defendant denies the allegations of Paragraph 36  
8 of the Complaint in that the changes Plaintiff is seeking are not "Readily  
9 Achievable" inasmuch as Steele Canyon is left largely in its natural state without  
10 construction or modifications that significantly alter its natural state.

11 37. Defendant denies the allegations of Paragraph 37 contained in  
12 Paragraph 37 of the Complaint and lacks information and belief sufficient to admit  
13 or deny Plaintiff's suffering.

14 38. This answering Defendant denies the Plaintiff is entitled to any  
15 relief as prayed for in Paragraph 38 of the Complaint.

16 39. This answering Defendant incorporates its responses to  
17 Paragraphs 1-39 above herein as its response to the allegations of Paragraph 39.

18 40. This answering Defendant denies the allegations of Paragraph 40  
19 of the Complaint.

20 41. This answering Defendant admits the statutes referenced in  
21 Paragraph 41 exist and state what they state.

22 42. This answering Defendant denies the allegations of Paragraph 42  
23 of the Complaint.

24 43. This answering Defendant denies Plaintiff was harmed by any  
25 action or any inaction on its part as alleged in Paragraph 43 of the Complaint.

26 44. This answering Defendant denies it was a substantial factor in  
27 causing Plaintiff harm by any action or any inaction on its part as alleged in

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
HART, KIENLE PENTECOST  
4 HUTTON CENTRE DRIVE, SUITE 900  
SANTA ANA, CALIFORNIA 92707

1 Paragraph 44 of the Complaint.

2 45. This answering Defendant denies it was a substantial factor in  
3 causing Plaintiff harm by any action or any inaction on its part as alleged in  
4 Paragraph 45 of the Complaint.

5 46. This answering Defendant denies the allegations of Paragraph 46  
6 of the Complaint that Plaintiff is entitled to injunctive relief.

7 47. This answering Defendant denies the allegations of Paragraph 47  
8 of the Complaint that Plaintiff is entitled to damages, statutorily or otherwise.

9 **PRAYER**

10 This answering Defendant denies Plaintiff is entitled to any relief whatsoever.

11 **AFFIRMATIVE DEFENSES**

12 13 As and for their affirmative defenses to the Complaint, Defendants plead the  
14 following:

15 **FIRST AFFIRMATIVE DEFENSE**

16 17 (Failure to State a Cause of Action)

18 1. As a separate and affirmative defense to the Complaint on file  
19 herein, and each and every cause of action set forth in said Complaint, this  
20 answering Defendant alleges that said Complaint and each and every cause of action  
21 therein fails to state a cause of action against this answering Defendants and each of  
22 them.

23 **SECOND AFFIRMATIVE DEFENSE**

24 25 (Unclean Hands)

26 2. As a separate and affirmative defense to the Complaint on file  
27 herein, and each and every cause of action set forth in said Complaint, this

HART, KIENLE PENTECOST  
4 HUTTON CENTRE DRIVE, SUITE 900  
SANTA ANA, CALIFORNIA 92707

1 answering Defendant alleges that to the extent Plaintiff seeks equitable relief,  
2 Plaintiffs' inequitable conduct constitutes unclean hands and, therefore, bars the  
3 granting of relief to Plaintiffs.

4

5 **THIRD AFFIRMATIVE DEFENSE**

6 (Waiver)

7 3. As a separate and affirmative defense to the Complaint on file  
8 herein, and each and every cause of action set forth in said Complaint, this  
9 answering Defendant alleges that Plaintiff was engaged in conduct which constitutes  
10 a waiver of Plaintiffs' rights and claims as alleged in the Complaint, thereby  
11 excusing Defendants.

12

13 **FOURTH AFFIRMATIVE DEFENSE**

14 (Estopel)

15 4. As a separate and affirmative defense to the Complaint on file  
16 herein, and each and every cause of action set forth in said Complaint, this  
17 answering Defendant alleges that Plaintiff waived any Complaint and are thereby  
18 estopped from asserting the causes of action set forth in the Complaint against  
19 Defendants.

20

21 **FIFTH AFFIRMATIVE DEFENSE**

22 (Failure to Mitigate Damages)

23 5. As a separate and affirmative defense to the Complaint on file  
24 herein, and each and every cause of action set forth in said Complaint, this  
25 answering Defendant alleges that Plaintiff failed to mitigate damages.

## SIXTH AFFIRMATIVE DEFENSE

### (Lack of Damages)

6. As a separate and affirmative defense to the Complaint on file herein, and each and every cause of action set forth in said Complaint, this answering Defendant alleges that Plaintiff's Complaint for Damages cannot be sustained because Plaintiff did not suffer any damage.

## SEVENTH AFFIRMATIVE DEFENSE

### (Good Faith)

7. As a separate and affirmative defense to the Complaint on file herein, and each and every cause of action set forth in said Complaint, this answering Defendant alleges that the Complaint, and each and every cause of action set forth therein, is barred because Defendant's actions were undertaken in good faith with the absence of malicious intent and so constitute lawful, proper and justified means to accomplish legitimate business purposes.

## **EIGHTH AFFIRMATIVE DEFENSE**

### (Justification)

8. As a separate and affirmative defense to the Complaint on file herein, and each and every cause of action set forth in said Complaint, this answering Defendant alleges that any harm or unfairness resulting from matters alleged in the Complaint is outweighed by necessity, utility, and convenience and this answering Defendant alleges that such actions and practices were justified.

## NINTH AFFIRMATIVE DEFENSE

(Laches)

9. As a separate and affirmative defense to the Complaint on file

1 herein, and each and every cause of action set forth in said Complaint, this  
2 answering Defendant alleges that Plaintiff is barred from maintaining the pending  
3 action or to recover the relief or remedies alleged and prayed for in the Complaint,  
4 or any other relief or remedies as such claims and remedies are barred by the  
5 doctrine of laches.

6

7 **TENTH AFFIRMATIVE DEFENSE**

8 (Superseding Cause)

9 10. As a separate and affirmative defense to the Complaint on file  
10 herein, and each and every cause of action set forth in said Complaint, this  
11 answering Defendant alleges that the cause of Plaintiff's injuries and damages, if  
12 any exist, were caused by a superseding cause unrelated to this answering  
13 Defendant's actions or conduct.

14

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 (Comparative/Contributory Negligence)

17 11. As a separate and affirmative defense to the Complaint on file  
18 herein, and each and every cause of action set forth in said Complaint, this  
19 answering Defendant alleges that Plaintiff was negligent and failed to exercise  
20 sufficient care, thereby causing damages and claims for which this answering  
21 Defendant is not responsible and/or parties other than this answering Defendant are  
22 responsible.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 (Mutual Mistake of Material Fact)

25 12. As a separate and affirmative defense to the Complaint on file  
26 herein, and each and every cause of action set forth in said Complaint, this  
27 answering Defendant alleges that the Complaint, and each and every cause of action

4 HUTTON CENTRE DRIVE, SUITE 900  
HART, KIENLE PENTECOST  
SANTA ANA, CALIFORNIA 92707

1 set therein, is barred due to mutual mistake of material fact.  
2

3 **THIRTEENTH AFFIRMATIVE DEFENSE**

4 (In Pari Delicto)

5 13. As a separate and affirmative defense to the Complaint on file  
6 herein, and each and every cause of action set forth in said Complaint, this  
7 answering Defendant alleges that Plaintiff's claims are barred by the doctrine of in  
8 pari delicto.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 (Justification)

11 14. As a separate and affirmative defense to the Complaint on file  
12 herein, and each and every cause of action set forth in said Complaint, this  
13 answering Defendant alleges that some or all of Plaintiff's claims are barred by the  
14 business or legal justification defense.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 (Repairs Demanded are not "Readily Achievable")

17  
18 15. As a separate and affirmative defense to the Complaint on file  
19 herein, and each and every cause of action set forth in said Complaint, this  
20 answering Defendant alleges that the repairs demanded in the Complaint are not  
21 "Readily Achievable" means (as defined by C.F.R. § 36.104).  
22

23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 (Reservation of Additional Affirmative Defenses)

25 16. As a separate and affirmative defense to the Complaint on file  
26 herein, and each and every cause of action set forth in said Complaint, this  
27 answering Defendant alleges that certain separate and additional defenses to the  
28

1 entire Complaint or to individual causes of action therein may be available to them.  
 2 However, these separate and additional defenses require discovery be completed  
 3 before they can be properly asserted. Therefore, this answering Defendant will  
 4 move to amend its Answer to the Complaint, if necessary, to allege such separate  
 5 and additional defenses after they have been ascertained by this answering  
 6 Defendant or according to proof at trial.

7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, this answering Defendant requests  
 10 .2 the following relief:

11 1. Plaintiff's entire Complaint be dismissed in its entirety with prejudice;  
 12 2. Judgment be entered in favor of this answering Defendant;  
 13 3. This answering Defendant be awarded costs of suit; and  
 14 5. This answering Defendant be awarded such other and further relief as the  
 15 Court deems appropriate and proper.

16

17 **DEMAND FOR JURY TRIAL**

18 This answering Defendant demands a trial by jury on all issues triable by jury.

19

20

21 Dated: November 14, 2022

22

23 HART KIENLE PENTECOST



24 Bv: \_\_\_\_\_

25 John H. Pentecost  
 Robert M. Dickson  
 Attorneys for Defendant Sun  
 Communities, Inc.

HART, KIENLE PENTECOST  
 4 HUTTON CENTRE DRIVE, SUITE 900  
 SANTA ANA, CALIFORNIA 92707

PROOF OF SERVICE

1 Robinson v. Sun Communities, Inc., et al.  
2 Case Number: 3:22-cv-05312-TSH

3 I, the undersigned, am an employee in the County of Orange, State of California. I am over the age of 18  
4 and not a party to the within action; am employed with Hart Kienle Pentecost and my business address is 4  
5 Hutton Centre Drive, Suite 900, Santa Ana, CA 92707; [alara@hkplawfirm.com](mailto:alara@hkplawfirm.com)

6 On November 14, 2022, I caused the foregoing document(s) described as **SUN COMMUNITIES,  
7 INC. ANSWER TO COMPLAINT** to be served on the interested parties in this action as follows:

8  by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as stated below or  
9  by sending a copy as stated and addressed below:

10 PLEASE SEE ATTACHED

11  **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence  
12 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with  
13 postage thereon fully prepaid Santa Ana, California in the ordinary course of business. I am aware that on  
14 motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is  
15 more than one day after date of deposit for mailing in the affidavit.

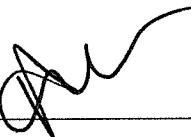
16  **BY ELECTRONIC SERVICE.** I served the above listed document(s) described via the United States  
17 District Court's Electronic Filing Program on the designated recipients via electronic transmission through the  
18 CM/ECF system on the Court's website. The Court's CM/ECF system will generate a Notice of Electronic  
19 Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute  
20 service of the document(s). Registration as a CM/ECF user constitutes consent to electronic service through  
21 the court's transmission facilities.

22  **BY PERSONAL SERVICE:** I personally delivered the documents to the persons at the addresses listed  
23 herein. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office  
24 by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with  
25 a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the  
26 evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence  
27 with some person not younger than 18 years of age between the hours of eight in the morning and six in the  
28 evening.

29  [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is  
30 true and correct.

31  [Federal] I declare under penalty of perjury that the foregoing is true and correct.

32 Executed on November 14, 2022, at Santa Ana, California.

33   
34 Anna Lara

35 **HART KIENLE PENTECOST**  
36 A PROFESSIONAL CORPORATION  
37 4 HUTTON CENTRE DRIVE, SUITE 900  
38 SANTA ANA, CALIFORNIA 92707

1 **PROOF OF SERVICE**  
2 *Robinson v. Sun Communities, Inc., et al.*  
3 *Case Number: 3:22-cv-05312-TSH*  
4

5 Richard J. Morin  
6 Law Office of Rick Morin, PC  
7 555 Capitol Mall, Suite 750  
8 Sacramento, CA 95814  
9 (916) 333-2222  
10 Email: legal@rickmorin.net

11 Richard J. Morin  
12 Law Office of Rick Morin, PC  
13 555 Capitol Mall, Suite 750  
14 Newport Beach, CA 92660  
15 (949) 996-3094  
16 Email: legal@rickmorin.net

17 *Attorney for Plaintiff David Robinson*

18 **HART KIENLE PENTECOST**  
19 A PROFESSIONAL CORPORATION  
20 4 HUTTON CENTRE DRIVE, SUITE 900  
21 SANTA ANA, CALIFORNIA 92707

22 23  
24 25  
26 27  
28